IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

WP(C).No. 22947 of 2006(F)

AGAINST THE ORDER DATED 05/07/2006 IN ARC 713/02 IN EP.141/2005 of PRL.SUB COURT,THRISSUR

.....

PETITIONER:

MOIDU, AGED 56 YEARS,
S/O. KUKNNATH AHAMMU, THIRUVATHRA DESOM,
MANATHALA AMSOM, CHAVAKKAD TALUK.

BY ADV. SRI.P.K.SAJEEV

RESPONDENT:

R 344 CHAVAKKAD TALUK RURAL HOUSING
CO-OPERATIVE SOCIETY, P.O. PAVARATTY,
REPRESENTED BY ITS SECRETARY, JESTIN.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.22947/2006 F

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE EXECUTION PETITION DTD. 21/02/2005 IN E.P.141 OF 2005 IN A.R.C.713/02 ON THE FILES OF SUB COURT, THRISSUR.

EXT.P2: COPY OF THE DRAFT SALE PROCLAMATION DTD. 21/02/2005 IN E.P.141/05 IN A.R.C.713/02 ON THE FILES OF SUB COURT, THRISSUR.

EXT.P3: COPY OF THE OBJECTION DTD. 02/01/2006 IN E.P.141/05 IN A.R.C.713/02 DTD. 02/01/2006 ON THE FILES OF SUB COURT, THRISSUR.

EXT.P4: COPY OF THE APPLICATION E.A.13/06 IN E.P.141/05 IN ARC.713/02 DTD. 02/01/06 ON THE FILES OF SUB COURT, THRISSUR.

EXT.P5: COPY OF THE APPLICATION E.A.13A/06 IN E.P.141/05 IN ARC 713/02 DTD. 02/01/06 ON THE FILES OF SUB COURT, THRISSUR.

EXT.P6: COPY OF THE APPLICATION E.A.440/06 IN E.P.141/05 IN ARC.713/02 DTD. 03/03/06 ON THE FIELS OF SUB COURT, THRISSUR.

EXT.P7: COPY OF THE APPLICATION E.A.1228/06 IN E.P.141/05 IN ARC. 713/02 DTD. 5/07/2006 ON THE FILES OF SUB COURT, THRISSUR.

/TRUE COPY/

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 22947 of 2006

Dated this the 2nd day of July , 2007

JUDGMENT

This writ petition under Article 227 of the Constitution, challenging an order of delivery passed by the Execution Court even during the pendency of application filed by the petitioner under Order 21 Rule 90 for setting aside sale, is remaining defective for non completion of service on the respondent. Till this moment the petitioner has not produced copy of the impuned order of delivery. However, noticing the grievance of the petitioner that the order of delivery was passed even as the application to set aside sale was pending, this court on on 25.8.2006 granted stay for six months on condition that the petitioner pays or deposits in the court below for payment to the decree holder an amount of Rs.20,000/- within two months from 25.8.2006. The learned counsel for the petitioner is not in a position to affirm whether the above condition has been complied

with by the petitioner. I am of the view that, in the nature of this case, it is not necessary to wait till the service of notice is completed on the respondent.

2. Having regard to the averments in the writ petition and the submissions of the learned counsel for the petitioner, this writ petition will stand disposed of issuing the following directions:

i). The Execution Court will verify whether the petitioner has paid or deposits the sum of Rs.20,000/- on or before 25.8.2006 as ordered by this court. On verification, if it is seen that payments or deposits has been actually made by the petitioner, the court will verify whether the application to set aside the sale filed by the petitioner is pending. If it is seen that the same is even now pending, the court will immediately take up those application, hear both sides and dispose of that application.

ii). Considering the above direction, the order of stay will continue for a period of two more months from today. It is, however, made clear that if condition regarding deposit of Rs.20,000/- has not been complied with by the petitioner, the petitioner will not get benefit of this judgment and under such an

eventuality, the writ petition will stand dismissed completely.

PIUS C. KURIAKOSE,
JUDGE.

dpk